

LAW COMMISSION



STATUTE LAW REVISION TOWN AND COUNTRY PLANNING REPEAL PROPOSALS



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BACKGROUND NOTES ON STATUTE LAW REVISION

What is it?

1. Statute law revision is the process of repealing statutes that are no longer of practical utility. The purpose is to modernise and simplify the statute book, thereby reducing its size and thus saving the time of lawyers and others who use it. This in turn helps to avoid unnecessary costs. It also stops people being misled by obsolete laws that masquerade as live law. If an Act features still in the statute book and is referred to in text-books, people reasonably enough assume that it must mean something.

Who does it?

2. The work of statute law revision is carried out by the Law Commission and the Scottish Law Commission pursuant to section 3(1) of the Law Commissions Act 1965. Section 3(1) imposes a duty on both Commissions to keep the law under review “with a view to its systematic development and reform, including in particular ... the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law”.

Statute Law (Repeals) Bill

3. Implementation of the Commissions’ statute law revision proposals is by means of special Statute Law (Repeals) Bills. 17 such Bills have been enacted since 1965 repealing more than 2000 whole Acts and achieving partial repeals in thousands of others. Broadly speaking the remit of a Statute Law (Repeals) Bill extends to any enactment passed at Westminster. Accordingly it is capable of repealing obsolete statutory text throughout the United Kingdom (i.e. England, Wales, Scotland and Northern Ireland) as well as extending where appropriate to the Isle of Man.

Consultation

4. The Law Commission consults widely before finalising its repeal proposals. The purpose of consulting is to secure as wide a range of views on the proposals as is practicable from all categories of persons who may be affected by the proposals. So the consultation may be with central or local government, organisations, trade bodies, individuals or anyone else who appears to have an interest in a proposal.

5. So far as consulting central government is concerned, any Department or agency with an interest in the subject matter of the repeal proposal will be invited to comment. Because obsolete legislation often extends throughout the United Kingdom it may be necessary to invite comments from several different Departments. So the following will routinely be consulted-

- ◆ The English Department or Departments with policy responsibility for the subject matter of the proposed repeal (this responsibility will extend to Scotland in appropriate cases)
- ◆ The Counsel General to the National Assembly for Wales and the Wales Office (unless the proposed repeal relates only to England)
- ◆ SLR colleagues at the Scottish Law Commission (if the proposed repeal extends to Scotland)
- ◆ Northern Ireland officials (if the proposed repeal extends to Northern Ireland).

Selection of repeal candidates

6. Candidates for repeal are selected on the basis that they are no longer of practical utility. Usually this is because they no longer have any legal effect on technical grounds - because they are spent, unnecessary or obsolete. But sometimes they are selected because, although they strictly speaking do continue to have legal effect, the purposes for

which they were enacted either no longer exist or are nowadays being met by some other means.

7. Provisions commonly repealed by Statute Law (Repeals) Acts include the following-
- (a) references to bodies, organisations, etc. that have been dissolved or wound up or which have otherwise ceased to serve any purpose;
 - (b) references to issues that are no longer relevant as a result of changes in social or economic conditions (e.g. legislation about tithes or tin mines);
 - (c) references to Acts that have been superseded by more modern (or EU) legislation or by international Convention;
 - (d) references to statutory provisions (i.e. sections, schedules, orders, etc.) that have been repealed;
 - (e) repealing provisions e.g. "Section 33 is repealed/shall cease to have effect";
 - (f) commencement provisions once the whole of an Act is in force;
 - (g) transitional or savings provisions that are spent;
 - (h) provisions that are self-evidently spent - e.g. a one-off statutory obligation to do something becomes spent once the required act has duly been done;
 - (i) powers that have never been exercised over a period of many years or where any previous exercise is now spent.

General savings

8. Much statute law revision is possible because of the general savings provisions of section 16(1) of the Interpretation Act 1978. This provides that where an Act repeals an enactment, the repeal does not (unless the contrary intention appears) -

- “(a) revive anything not in force or existing at the time at which the repeal takes effect;
- (b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment;
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that enactment;
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed”.

Gradual obsolescence

9. The obsolescence of statutes tends to be a gradual process. Usually there is no single identifiable event that makes a statute obsolete. The Statute Law (Repeals) Act 2004 contained several examples of legislation being overtaken by social and economic changes. A scheme to provide farming work for ex-servicemen after the First World War had long fallen into disuse. The policy of maximising cheap food production after the Second World War had been overtaken by new farming methods and the influence of the Common Agricultural Policy. Victorian powers for the Metropolitan Police to license shoeblacks and commissionaires had become as irrelevant as the offence of fraudulently impersonating a shoeblack or commissionaire. And an 1840s Act to sanction lotteries to help struggling artists sell their work had become superseded by the modern law on lotteries.

10. Even within individual statutes, the obsolescence tends to be gradual. Some provisions fade away more quickly than others. These include commencement and transitory provisions and 'pump-priming' provisions (e.g. initial funding and initial appointments to a Committee) to implement the new legislation. Next to go may be order-making powers that are no longer needed. Then the Committee established by the Act no longer meets and can be abolished. However, other provisions may be unrepealable for generations, particularly if they confer pensions rights or confer security of tenure or employment rights. Other provisions may be virtually unrepealable ever. Much of English property law relies on medieval statutes such as *Quia Emptores* (1290) which is regarded as one of the pillars of the law of real property. This last example usefully shows that just because a statute is ancient it is not necessarily obsolete.

Help from consultees

11. Sometimes it is impossible to tell whether a provision is repealable without factual information that is not readily ascertainable without 'inside' knowledge of a Department or other organisation. Examples of this include savings or transitional provisions which are there to preserve the status quo until an office-holder ceases to hold office or until repayment of a loan has been made. In cases like these the repeal notes drafted by the Law Commissions often invite the organisation being consulted to supply the necessary information. Any help that can be given to fill in the gaps is much appreciated.

TOWN AND COUNTRY PLANNING REPEAL PROPOSALS

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TOWN AND COUNTRY PLANNING REPEAL PROPOSALS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Civic Amenities Act 1967 (c.69)	Section 15. Section 30(1). Section 32(2).

The Civic Amenities Act 1967

1. The purposes of the Civic Amenities Act 1967 (“the 1967 Act”) included the making of further provision for the protection and improvement of buildings of architectural or historic interest and the preservation and planting of trees. The 1967 Act has been extensively repealed over the years so that only a few provisions remain in force.

Section 15

2. Section 15 provided for penalties. Subsection (1) has already been repealed¹. Subsection (2) amended section 17(1) of the Forestry Act 1967 by substituting an increased maximum fine (£250) for unlawfully felling trees. This amendment has, however, been superseded by virtue of sections 38 and 46 of the Criminal Justice Act 1982 which have the effect of substituting a fine not exceeding level 4 on the standard scale². Subsection (2) is therefore spent. There being no other subsections, section 15 is proposed for repeal.

Section 30(1)

¹ Town and Country Planning Act 1971, s.292(2), Sch.25 and the Town and Country Planning (Scotland) Act 1972, s.277(2), Sch.23.

² As originally enacted, the Criminal Justice Act 1982 fixed the amount of the fines for levels 3 and 4 at £200 and £500 respectively. The effect of section 38 was to increase the £250 fine up to the level 4 maximum then in force i.e. £500.

3. Section 30(1) provides for interpretation of expressions used in the 1967 Act. Much of section 30(1) has already been repealed³. The only definition remaining is that of 'the Minister'. However the only place remaining in the 1967 Act where 'the Minister' as an expression appears is in section 4(2) which relates to the powers of the Minister for the purposes of section 4 of the Historic Buildings and Ancient Monuments Act 1953 rather than for the purposes of the 1967 Act. Accordingly the definition of 'the Minister' in section 30(1) is not required for section 4(2) of the 1967 Act. The only other remaining provision in section 30(1) is a provision interpreting references to 'the commencement of this Act'. However no such references now remain. Accordingly the whole of section 30(1) may now be repealed.

Section 32(2)

4. Subsection (2) of section 32 provides for commencement of Parts 1 to 3 of the 1967 Act. Except for section 2(1), these Parts were to come into force one month after Royal Assent (27 July 1967) subject to-

- ◆ section 18(7) and (8) and
- ◆ section 20(9).

5. Subject to these limitations and exceptions Parts 1 to 3 came into force on 27 August 1967. Now that sections 2, 18 and 20 have all been repealed⁴, section 32(2) is spent and may safely be repealed.

Extent

6. The provisions of the 1967 Act proposed for repeal extend throughout Great Britain (including the Isles of Scilly⁵).

Consultation

³ Town and Country Planning Act 1971, s.292(2), Sch.25; Town and Country Planning (Scotland) Act 1972, Sch.23; Refuse Disposal (Amenity) Act 1978, s.12(2), Sch.2; Planning (Consequential Provisions) Act 1990, s.2, Sch.1, Pt.1; Planning (Consequential Provisions) (Scotland) Act 1997, s.3, Sch.1, Pt.1. Amended by Town and Country Planning Act 1971, s.292, Sch.25; Town and Country Planning (Scotland) Act 1972, Sch.23; and SI 1970/1681, arts.2(1), 6(3).

⁴ Section 2 repealed by Town and Country Planning Act 1968, s.108, Sch.11 and Town and Country Planning (Scotland) Act 1969, s.107, Sch.11; ss.18 and 20 repealed by Refuse Disposal (Amenity) Act 1978, s.12(2), Sch.2.

⁵ Section 29; Isles of Scilly (Civic Amenities) Order 1970, SI 1970/239.

7. The Office of the Deputy Prime Minister, the relevant authorities in Wales and Scotland and the Council of the Isles of Scilly have been consulted about these repeal proposals.

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Town and Country Amenities Act 1974 (c.32)

The whole Act.

The Town and Country Amenities Act 1974

1. The purposes of the Town and Country Amenities Act 1974 (“the 1974 Act”) included the preservation and enhancement of buildings of architectural or historic interest and their surroundings and landscapes.

2. Most of the 1974 Act has been repealed by a succession of enactments.⁶ The only substantive provision remaining is section 12 which added text to section 4(1) of the Historic Buildings and Ancient Monuments Act 1953 (grants for preservation of historic buildings, their contents and adjoining land). In other words, the 1974 Act is obsolete except in respect of the section 12 amendment. The effect of section 12 may conveniently be preserved by the entry in the attached *Schedule of consequential and connected provisions*. This will in effect supersede section 12 and enable the whole of the 1974 Act to be repealed⁷.

Extent

3. The 1974 Act extends throughout Great Britain.

Consultation

4. The Office of the Deputy Prime Minister, the Department for Culture, Media and Sport and the relevant authorities in Wales and Scotland have been consulted about the proposed repeal.

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⁶ These include the Planning (Consequential Provisions) Act 1990, s.3, Sch.1, Pt.1; and the Planning (Consequential Provisions) (Scotland) Act 1997, s.3, Sch.1, Pt.1.

⁷ Section 13 of the 1974 Act (dealing with citation, repeals, commencement and extent) and the Schedule of repeals are either already spent or else will fall consequentially once section 12 ceases to have effect.

SCHEDULE
OF
CONSEQUENTIAL AND CONNECTED PROVISIONS

Historic Buildings and Ancient Monuments Act 1953 (c.49)

. Section 4(1) of the Historic Buildings and Ancient Monuments Act 1953 (grants for preservation of historic buildings, their contents and adjoining land) has effect as if section 12 of the Town and Country Amenities Act 1974 continued in force.

Local Government, Planning and
Land Act 1980 (c.65)

Section 25(2).
Section 86.
Sections 151 to 154.
Section 159.
Sections 173 to 175.
Section 178.
Section 183(3).
In Schedule 23, paragraphs
4, 6, 7, 13, 15 and 18.

Local Government, Planning and Land Act 1980

1. The purposes of the Local Government, Planning and Land Act 1980 (“the 1980 Act”) included amending the law about planning, providing for the establishment of corporations to regenerate urban areas, and making further provision in relation to gipsies and their caravan sites.

2. Section 25(2) repealed section 174(3) of the Local Government Act 1972 and section 46(2) of the Local Government Act (Scotland) Act 1973. Once these repeals had taken effect on 13 November 1980⁸, section 25(2) became spent.

3. Section 86 provided for the distribution of planning functions between planning authorities. Subsections (1) to (7) have already been repealed⁹. Subsections (8) to (10) provide for the coming into operation of certain provisions of the 1980 Act on ‘the commencement date’, a date defined in subsection (11) as 2 months after Royal Assent i.e. 2 months after 13 November 1980. Accordingly subsections (8) to (10), and subsection (11) which is ancillary to those subsections, are now spent. There being no further subsections in section 86, the whole of that section is now unnecessary.

⁸ Section 25 came into force at Royal Assent on 13 November 1980.

⁹ Subsections (1) to (6) were repealed by Planning (Consequential Provisions) Act 1990, s.3, Sch.1, Pt.1; subsection (7) was repealed by Local Government Act 1985, s.102(2), Sch.17.

4. Section 135 empowers the Secretary of State by order to establish urban development corporations for areas designated as urban development areas under section 134.

5. Sections 151 to 154 and 159 empower the Secretary of State to make orders directing that certain functions in an urban development area (or in a portion of it) shall be exercisable by the urban development corporation for that area. These functions relate to-

- ◆ section 151 – building control
- ◆ section 152 – fire precautions and home insulation
- ◆ section 153 – housing authority
- ◆ section 154 – rent rebates
- ◆ section 159 – public health, pest control, etc.

6. Although sections 151-154 and 159 have been brought into force, no orders have been made under them so as to vest any of these functions in urban development corporations. As a result, the functions have remained exercisable by the (mainly) local authority bodies that are empowered to exercise them under the general law. Accordingly it would appear that section 151 to 154 and 159 serve no practical utility. **ODPM and the relevant authorities in Wales and Scotland are invited to agree to these provisions being repealed on that basis.**

Section 173

7. Section 173 which provided as to the duty of local authorities to provide caravan sites for gipsies, repealed part of section 6(2) of the Caravan Sites Act 1968 (“the 1968 Act”) and section 190(2) of the Local Government Act 1972 (“the 1972 Act”). The repeals came into force on 13 December 1980¹⁰ in respect of the 1968 Act and on 13 November 1981¹¹ in respect of the 1972 Act. Section 173 thereupon became spent.

¹⁰ Section 178(3) – section 6 of the 1968 Act was later repealed by the Criminal Justice and Public Order Act 1994, ss.80(1), (3), (4), 168(3), Sch.11.

¹¹ Section 178(2).

Sections 174 and 175

8. Section 174 substituted section 11 of the 1968 Act and section 175 substituted section 12 of the 1968 Act. Sections 11 and 12 of the 1968 Act have been repealed¹². Sections 174 and 175 are spent and are, therefore, proposed for repeal.

Section 178

9. Section 178 provides for the commencement and extent of Part 17 (sections 173 to 178). Subsection (1) and (2) provide for the commencement of section 174 and section 173(b). The proposed repeal of these provisions will make subsections (1) and (2) unnecessary. Subsection (3) is a spent commencement provision. Subsection (4), relating to the extent of sections 173 to 175, becomes unnecessary with the proposed repeal of those sections. Accordingly, the whole of section 178 may now be repealed.

Section 183(3)

10. Section 183(3) provided for the repeal of section 6(3) and (4) of the Local Authority Services Act 1970 and became spent when the repeal came into force at Royal Assent on 13 November 1980.

Schedule 23 paragraphs 4, 6, 7, 13, 15 and 18

11. Parts 3 and 5 of Schedule 23 provide for amendments to the Town and Country Planning Act 1959 ("the 1959 Act") and the Local Government Act 1972 ("the 1972 Act") respectively. The following paragraphs of Schedule 23 repealed the following provisions -

Schedule 23 to the 1980 Act

- ◆ paragraph 4
- ◆ paragraph 6
- ◆ paragraph 7

Repealed provisions of the 1959 Act

- section 23(3) (partial)
- section 26(3) and (5) (partial)
- section 30(5)

¹² Criminal Justice and Public Order Act 1994, ss.80(1), (3), (4), 168(3), Sch.11.

	<i>Repealed provisions of the 1972 Act</i>
◆ paragraph 13	section 122(3) and (5)
◆ paragraph 15	section 123(3), (4) and (5)
◆ paragraph 18	section 126(5).

12. The repeals came into force at Royal Assent on 13 November 1980 whereupon these paragraphs of Schedule 23 became spent.

Extent

13. The 1980 Act extends, in respect of the repeal proposals, throughout Great Britain (but with some extending only to England and Wales).

Consultation

14. The Office of the Deputy Prime Minister and the relevant authorities in Wales and Scotland have been consulted about these proposed repeals.

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New Towns Act 1981 (c.64)	In section 60(1), the words “to (4)”. In section 60(2), the words “, except during” to “(4) below,”. Section 60(4). Sections 62A and 62B. In section 77(3), the words “, 62A and 62B”. In section 77(4)(b), the words “or 62B(1)”. In Schedule 12, paragraphs 17, 18, 27 and 30.
New Towns and Urban Development Corporations Act 1985 (c.5)	Section 8(1).

The New Towns Act 1981

1. The main purpose of the New Towns Act 1981 (“the 1981 Act”) was to consolidate certain enactments relating to new towns.

Section 60

2. Section 60 provides for a limit on borrowing by development corporations¹³ and the Commission for the New Towns (“the Commission”)¹⁴. Subsection (2)¹⁵ provided for the limit to be £4,600 million, or such greater sum as specified by order, not exceeding £5,250 million. This limit was subject to subsection (4)¹⁶ which provided that during the period beginning with the commencement of the New Towns and Urban Development Corporations Act 1985 (“the 1985 Act”) and ending with 30 September 1986 the limit was £5,250 million.

3. Subsection (4) is a transitional provision. The transitional period from 11 May 1985 (commencement of the 1985 Act¹⁷) to 30 September 1986 has long since expired. Subsection (4) of section 60 is spent and is, therefore, proposed for repeal.

¹³ Established by order under s.3(1).

¹⁴ Continued in being under s.35. The Commission merged in May 1999 with the Urban Regeneration Agency to form a body known as English Partnerships.

¹⁵ Inserted by the New Towns and Urban Development Corporations Act 1985, s.7(3).

¹⁶ *Ibid.*

¹⁷ The 1985 Act, s.15(2).

4. The repeal of section 60(4) will result in two consequential repeals. These are the reference to subsection (4) in subsection (1), and the reference to subsection (4) in subsection (2).

*Section 62A*¹⁸

5. Section 62A(1) provided power to extinguish by order loan obligations of development corporations. Subsection (4) provided that no such order could be made after 30 September 1986. An order was made on 4 August 1986¹⁹ whereby the liabilities of specified development corporations in respect of certain advances were extinguished on 1 September 1986. Given that the date of extinguishment has long since passed, section 62A appears spent and is proposed for repeal on that basis.

*Section 62B*²⁰

6. Section 62B(1) enabled loan obligations of development corporations and the Commission to be suspended by order. Subsection (7) provided that no such order could be made after 31 March 1996. An order was made under subsection (1) (“the Suspension Order”)²¹ on 21 August 1986 providing for certain specified loans made to specified development corporations to be suspended as follows-

<i>Suspension Order provision</i>	<i>Period of Suspension</i>
Schedule 1	12 September 1986 to 31 March 1988
Schedule 2	1 October 1986 to 31 March 1988.

Given that the periods of suspension have long since expired and that no orders could be made under section 62B after 31 March 1996, section 62B appears spent and is proposed for repeal on that basis.

Section 77(3) and (4)

7. Section 77 provides for regulations and orders under the 1981 Act. Due to the repeal of sections 62A and 62B the references to such sections in section 77(3)

¹⁸ Inserted by the 1985 Act, s.8(1).

¹⁹ The New Towns (Extinguishment of Liabilities) Order 1986, SI 1986/1382.

²⁰ Inserted by the 1985 Act, s.8(1).

²¹ The New Towns (Suspension of Loan Repayment) Order 1986, SI 1986/1436.

and (4)(b) will fall. Accordingly, in section 77(3) the words “62A and 62B”²² are proposed for repeal. In section 77(4)(b) the words “or 62B(1)”²³ are also proposed for repeal.

Consequential

8. Section 8(1) of the 1985 Act inserted sections 62A and 62B. With the repeal of these sections, section 8(1) will fall and is accordingly proposed for repeal.

Schedule 12

9. Schedule 12 provides for consequential amendments. *Paragraphs 17 and 18* amended sections 1(2) and 6(1) of the Community Land Act 1975 which have now been repealed.²⁴ Paragraphs 17 and 18 are accordingly now spent. *Paragraph 27* amended various provisions of the Housing Act 1980 (“the 1980 Act”). Only subparagraph (c) of paragraph 27 remains²⁵, which amends section 140 of the 1980 Act. With the repeal of section 140²⁶, paragraph 27(c) is spent. *Paragraph 30* amended provisions in paragraphs 10 and 12 in Part 2 of Schedule 3 to the British Telecommunications Act 1981. Since, however, the amended provisions in both of these paragraphs have now been repealed,²⁷ paragraph 30 is spent.

Extent

10. The 1981 Act extends, in respect of the repeal proposals, to England and Wales and throughout Great Britain in respect of section 60²⁸.

Consultation

11. The Office of the Deputy Prime Minister, HM Treasury, the Commissioners for the Reduction of the National Debt, English Partnerships (successor to the Commission for the New Towns) and the relevant authorities in Wales and Scotland have been consulted about these proposed repeals.

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²² Inserted by s.8(2) of the 1985 Act.

²³ *Ibid.*

²⁴ Local Government, Planning and Land Act 1980, s.101(1), Sch.17, Part 2.

²⁵ Subparas.(a), (b) and (d) of para.27 of Sch.12 were repealed by the Housing (Consequential Provisions) Act 1985, s.3, Sch.1 Pt.1.

²⁶ Housing and Planning Act 1986, ss.18, 24(3), Sch.4 paras.7, 11(2), Sch.12 Pt.1.

²⁷ Telecommunications Act 1984, s.109, Sch.4, para.3(2)(a); Sch.7 Pt.1.

²⁸ S.60 extends to Scotland by virtue of s.82(2)(a).

Housing and Planning Act 1986 (c.63)	Section 2(2). Section 4(6). Section 11. Section 47. Section 52. Section 53(1). Section 54. In section 58(1), the words "Schedule 10,". In section 58(2), the words "Part II of Schedule 11". In Schedule 11, Part 2.
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Housing and Planning Act 1986

1. According to its long title, the Housing and Planning Act 1986 ("the 1986 Act") was passed to make further provision with respect to housing, planning and local inquiries; to provide financial assistance for the regeneration of urban areas; and for connected purposes.

2. Section 2(1) amended section 129 of the Housing Act 1985 ("the 1985 Act") (discount on exercise of right to buy) by substituting new section 129(1) to (2B) for the existing section 129(1) and (2). Section 2(2) was a transitional provision providing that the amendment made by section 2(1) did not apply to any case where—
 - (a) a tenant's notice claiming to exercise the right to buy²⁹ was served before section 2(1) came into force on 7 January 1987³⁰; and
 - (b) the landlord had before that date served notice as to the terms of exercise of that right (under section 125 of the 1985 Act).

3. The passage of time since 1987 means that section 2(2) is now unnecessary and may be repealed on that basis.

²⁹ Or to acquire an additional share under a shared ownership lease.

³⁰ Housing and Planning Act 1986 (Commencement No.1) Order 1986, SI 1986/2262.

4. Similarly unnecessary is section 4(6) which disapplies the amendments made by section 4(1) to (5) to provisions in the 1985 Act relating to service charges and other contributions payable after exercise of the right to buy. Section 4(6) disapplies these amendments in any case where-

- (a) a tenant's notice claiming to exercise the right to buy was served before section 4 came into force on 7 January 1987³¹; and
- (b) the landlord had before that date served notice of terms of exercise of the right (under section 125 of the 1985 Act).

5. As with section 2(1) the passage of time since 1987 has rendered this transitional provision unnecessary.

Section 11

6. Section 11 inserted section 27C of the 1985 Act. Section 27C has however been repealed³² rendering section 11 spent. Section 11 is therefore proposed for repeal.

Section 47

7. Section 47 repealed section 134(2) of the Local Government, Planning and Land Act 1980. The repeal came into force on 7 January 1987³³. Section 47 is spent and is, therefore, proposed for repeal.

8. Section 52, which extends only to Scotland, provided in subsection (1) that no payment of grant under-

- (a) sections 237 to 239 of the Town and Country Planning (Scotland) Act 1972;

³¹ Ibid.

³² Leasehold Reform, Housing and Urban Development Act 1993, ss.132(2), 187(2), Sch.22.

³³ Housing and Planning Act 1986 (Commencement No.1) Order 1986, SI 1986/2262.

(b) section 14 of the Housing and Town Development (Scotland) Act 1957;
and

(c) section 9 of the Local Government (Scotland) Act 1966

should be made for the financial year 1986-87 or for any subsequent financial year. Moreover subsection (2) restricted claims for grant under certain of these enactments in respect of financial years prior to 1986-87. No such claim would be accepted unless it was received before 7 November 1986.

9. Section 52 is now obsolete. Subsection (1)(a) (relating to grants under sections 237 to 239 of the Town and Country Planning (Scotland) Act 1972 has already been repealed.³⁴ Subsections (1)(b) and (c) are spent because the enactments to which they refer have also been repealed³⁵. Subsection (2), limiting claims to those made before 7 November 1986, is clearly long spent.

10. Section 53(1), which extends only to Scotland, provided for the minor and consequential amendments contained in Part 2 of Schedule 11. However, since all the amendments contained in Part 2 have now either been repealed or else are spent,³⁶ section 53(1) and Part 2 are now unnecessary and may be repealed accordingly.

11. Section 54(1), which extends to Scotland, substituted paragraphs 21 and 22 in Schedule 32 to the Local Government, Planning and Land Act 1980. However, since those paragraphs have since been repealed,³⁷ section 54(1) is now spent. The

³⁴ Planning (Consequential Provisions) (Scotland) Act 1997, s.3, Sch.1, Pt.1.

³⁵ Section 14 of the Housing and Town Development (Scotland) Act 1957 was repealed by the Local Authority Grants (Termination) (Scotland) Order 1986 SI 1986/672; section 9 of the Local Government (Scotland) Act 1966 was repealed by the Local Authority Grants (Termination) (Scotland) Order 1980 SI 1981/127 SI 1981/127.

³⁶ Planning (Consequential Provisions) (Scotland) Act 1997, s.3, Sch.1, Pt.1 (which repealed paragraphs 28 to 60 and 62 of Part 2); paragraph 61 amended section 179(5) of Local Government (Scotland) Act 1973 but became spent when section 179 was repealed by Local Government etc (Scotland) Act 1994, s.180(2), Sch.14.

³⁷ Planning (Consequential Provisions) (Scotland) Act 1997, s.3, Sch.1, Pt.1; Planning (Consequential Provisions) Act 1990, s.3, Sch.1, Pt.1.

only other provision in section 54 was subsection (2) which has already been repealed.³⁸

12. Section 58 deals with extent. Subsection (1) describes the provisions of the 1986 Act that extend to England and Wales. The reference to Schedule 10 is now unnecessary since Schedule 10 has been repealed.³⁹ Similarly in subsection (2), which describes the provisions of the 1986 Act that extend to Scotland, the reference to Part 2 of Schedule 11 will become unnecessary in consequence of the proposal above to repeal Part 2 of Schedule 11.

Extent

13. The provisions of the 1986 Act proposed for repeal extend to England and Wales only except that the repeals relating to sections 52, 53, 54 and 58 and Part 2 of Schedule 11 extend also or only to Scotland.

Consultation

14. HM Treasury, the Office of the Deputy Prime Minister and the relevant authorities in Wales and Scotland have been consulted about the proposed repeals.

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³⁸ Planning (Consequential Provisions) (Scotland) Act 1997, s.3, Sch.1, Pt.1.

³⁹ Planning (Consequential Provisions) Act 1990, s.3, Sch.1, Pt.1.

Urban Development Corporations
(Financial Limits) Act 1987 (c.57)

The whole Act.

Urban Development Corporations (Financial Limits) Act 1987

1. The Urban Development Corporations (Financial Limits) Act 1987 (“the 1987 Act”) was passed to remove the limit on the amount of grants that may be made to urban development corporations and to provide a new limit applicable only to the amounts for the time being outstanding in respect of sums borrowed by them and sums issued by the Treasury in fulfilment of guarantees of their debts.

2. The only substantive provision in the 1987 Act is section 1(1) which substitutes a new paragraph 8 of Schedule 31 to the Local Government, Planning and Land Act 1980.

3. Section 1(2) is merely a technical provision repealing section 12 of the New Towns and Urban Development Corporations Act 1985 and revoking the Urban Development Corporations (Financial Limits) Orders 1983 and 1987. These repeals/revocations took effect on 17 February 1988 when section 1(2) came into force.⁴⁰ Section 1(2) thereupon became spent. Section 2 is ancillary to section 1 and provides for the 1987 Act’s short title, commencement and extent.

4. The 1987 Act now serves no purpose except to keep in force the amendment in section 1(1). The effect of section 1(1) may conveniently be preserved by the entry in the attached *Schedule of consequential and connected provisions*. This will then supersede section 1(1) and enable the whole of the 1987 Act to be repealed.

Extent

5. The 1987 Act extends to England and Wales.

⁴⁰ By virtue of the 1987 Act, s.2(2).

Consultation

6. HM Treasury, the Office of the Deputy Prime Minister and the relevant authorities in Wales have been consulted about the proposed repeals.

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Local Government, Planning and Land Act 1980 (c.65)

. Paragraph 8 of Schedule 31 to the Local Government, Planning and Land Act 1980 (financial limits of urban development corporations) continues to have effect as substituted by section 1(1) of the Urban Development Corporations (Financial Limits) Act 1987.

Planning (Hazardous Substances)
Act 1990 (c.10)

Section 26.
Section 41(2).
In section 41(3), the words
“Except so far as subsection
(2) applies,”.

Planning (Hazardous Substances) Act 1990

1. The Planning (Hazardous Substances) Act 1990 (“the 1990 Act”) consolidated certain enactments relating to special controls in respect of hazardous substances.

2. Sections 23 to 26AA deal with contraventions of hazardous substances control. Section 23 provides that an offence is committed where there is a contravention of hazardous substances control. Section 24 provides for the issue of a hazardous substances contravention notice in such cases if the hazardous substances authority considers this expedient.

3. However, section 26 (transitional exemptions) provides that no offence is committed under section 23 and no hazardous substances contravention notice may be issued in relation to a hazardous substance if, amongst other things, the substance was present on, over or under the land at any time during the establishment period (1 June 1991 to 31 May 1992)⁴¹.

4. These transitional exemptions have now, however, ceased to have effect. By virtue of section 26(2A)⁴², section 26 ceased to have effect at the end of ‘the transitional period’. The transitional period was the period of 6 months beginning 1

⁴¹ By virtue of sections 26(3) and 11(8), ‘establishment period’ means the period of 12 months immediately preceding ‘the relevant date’. Section 11(8) defines ‘the relevant date’ as the date on which Part 4 of the Housing and Planning Act 1986 came into force or, if Part 4 was not in force immediately before the date when the 1990 Act came into force, that date. In the event, Part 4 was not in force when the 1990 Act came fully into force on 1 June 1992: Planning (Hazardous Substances) Act 1990 (Commencement and Transitional Provisions) Order 1992, SI 1992/725. Accordingly ‘the relevant date’ is 1 June 1992 and the ‘establishment period’ is the immediately preceding 12 months period.

⁴² Section 26(2A) was inserted by Planning and Compensation Act 1991, s.25, Sch.3, Pt.1, para.14.

June 1992⁴³. Accordingly section 26 ceased to have effect as from 1 December 1992.

5. Section 41(2) provided for commencement of certain provisions of the 1990 Act. Subsection (2) only applied if an order had been made under section 57(2) of the Housing and Planning Act 1986 (“the 1986 Act”) appointing a date for commencement of certain of its provisions relating to hazardous substances during or at the end of a prescribed period (24 May 1990 to 24 August 1990)⁴⁴. No such order was made under section 57(2) of the 1986 Act. Subsection (2) of section 41 was never applied and became spent at the end of that period (24 August 1990). Section 41(2) is, therefore, proposed for repeal, along with the opening words of section 41(3) (which refer to section 41(2)).

Extent

6. The 1990 Act extends to England and Wales.

Consultation

7. The Office of the Deputy Prime Minister and the relevant authorities in Wales have been consulted about these repeal proposals.

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⁴³ By virtue of sections 26(3) and 11(8), ‘the transitional period’ ran for 6 months from ‘the relevant date’ i.e. 1 June 1992.

⁴⁴ The period of three 3 months beginning with the day on which the 1990 Act was passed (24 May 1990).

<i>Reference</i>	<i>Extent of repeal or revocation</i>
New Towns (Amendment) Act 1994 (c.5)	The whole Act.

New Towns (Amendment) Act 1994

1. The sole purpose of the New Towns (Amendment) Act 1994 (“the 1994 Act”) was to make amendments to Schedule 9 to the New Towns Act 1981 (“the 1981 Act”). Schedule 9 relates to the Commission for the New Towns.

2. The only substantive provision in the 1994 Act is section 1 which amends paragraph 5 of Schedule 9 to the 1981 Act and adds paragraph 8 to that Schedule. Section 2 is ancillary to section 1 and provides for the 1994 Act’s short title and extent.

3. Accordingly the 1994 Act serves no purpose except to keep in force the amendments contained in section 1. The effect of section 1 may conveniently be preserved by the entry in the *attached Schedule of consequential and connected provisions*. This will thus supersede section 1 and enable the whole of the 1994 Act to be repealed.

Extent

4. The 1994 Act extends to England and Wales only.

Consultation

5. The Office of the Deputy Prime Minister, English Partnerships (successor to the Commission for the New Towns) and the relevant authorities in Wales have been consulted about this proposed repeal.

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New Towns Act 1981 (c.64)

. Schedule 9 to the New Towns Act 1981 (which makes provision as to the Commission for the New Towns) continues to have effect as amended by section 1 of the New Towns (Amendment) Act 1994.

Town and Country Planning
(Costs of Inquiries etc.) Act 1995 (c.49)

The whole Act.

Town and Country Planning (Costs of Inquiries etc.) Act 1995

1. The main purpose of the Town and Country Planning (Costs of Inquiries etc.) Act 1995 (“the 1995 Act”) was to remove uncertainty as to liability for the payment of the costs of certain planning inquiries and other hearings. It authorised Ministers to cause these costs to be borne by planning authorities as well as authorising the making of Ministerial regulations to provide for fees and expenses payable to other persons.

Section 1

2. Section 1(1) inserted section 303A into the Town and Country Planning Act 1990 (“the 1990 Act”). Section 303A, which has been extensively amended by the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”)⁴⁵, makes local planning authorities responsible for the costs of certain planning inquiries and other hearings - referred to in section 303A as *qualifying procedures*⁴⁶. Section 303A applies to qualifying procedures which took place after the section came into force on 8 November 1995⁴⁷ and enables the Secretary of State to require the whole or part of the costs borne by him to be recovered from a local planning authority. Section 303A enables regulations to be made to prescribe *standard daily amounts* that can be recovered from local planning authorities and the amounts to be payable by such authorities to persons conducting inquiries. Regulations can also be made in relation to the payment of remuneration and travelling or subsistence allowances.

3. Section 1(2) to (4) are transitional provisions which modified section 303A of the 1990 Act as follows-

⁴⁵ The 2004 Act, s.118, Sch.6, para.11.

⁴⁶ A qualifying procedure is defined in section 303A(1A) as-

- (a) an independent examination under sections 20 or 64 of the 2004 Act;
- (b) a local inquiry or other hearing under paragraph 8(1)(a) of Schedule 7 to the 1990 Act.
- (c) the consideration of objections under paragraph 8(1)(b) of that Schedule.

⁴⁷ The date the 1995 Act came into force (Royal Assent).

- ◆ section 303A(5) as respects costs borne by the Secretary of State in respect of a qualifying procedure which arose before the coming into force of the first regulations made under section 303A(5) (*section 1(2)*),
- ◆ section 303A(8) as respects remuneration and travelling or subsistence allowances which were payable before the coming into force of the first regulations made under section 303A(8) (*section 1(3)*).

Section 1(4) provided for interpretation of section 303A as modified by section 1(2) and (3).

4. These transitional modifications to section 303A were necessary as they provided for a time period (in the months immediately following the coming into force of section 303A) during which there were no regulations prescribing standard daily amounts in respect of certain matters. The modifications provided for by section 1(2) and (3) enabled these amounts to be determined by the Secretary of State. The modifications are no longer necessary because the standard daily amounts have long since been prescribed by regulations which came into force as follows-

- ◆ 6 February 1996⁴⁸ - section 303A(5)
- ◆ 10 October 1996⁴⁹ - section 303A(8).

The amount of any costs which arose or allowances which were payable after such dates will now be provided for by the regulations made under section 303(A)(5) or (8).

5. Section 1(2) and (3) are spent and, therefore, are proposed for repeal. Section 1(4) will fall with the repeal of these subsections⁵⁰.

⁴⁸ The Town and Country Planning (Costs of Inquiries etc.) (Standard Daily Amount) Regulations 1996, SI 1996/24.

⁴⁹ The Town and Country Planning (Costs of Inquiries etc.) (Examination in Public) Regulations 1996, SI 1996/2382.

⁵⁰ The repeal of these provisions will not affect the costs etc. themselves. See s.16(1)(c) of the Interpretation Act 1978 which provides that, unless there is contrary intention, a repeal will not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment.

6. Section 1(5) added subsection (8) to section 35B of the 1990 Act (examinations in public). Subsection (8) reads-

“Without prejudice to section 303A(8) and (9), regulations may make provision with respect to the remuneration and allowances of any person or persons appointed by the Secretary of State to conduct an examination in public under this section.”.

7. Although the whole of section 35B has been repealed by the 2004 Act⁵¹, that repeal is subject to saving provisions which mean that section 1(5) of the 1990 Act continues to serve a purpose for the time being.

Section 2

8. Section 2 is a transitional provision which validated, with retrospective effect, certain requirements to pay and certain payments made in connection with appointments made by the Minister at any time *before* the passing of the 1995 Act to hold certain inquiries (“qualifying inquiries”) ⁵². The section provided as to recovery of costs⁵³ etc. on similar terms to those provided for by section 303A of the 1990 Act enabling the Minister to determine a standard daily amount in respect of costs (subsections (4) to (6)) and in respect of remuneration and travel or subsistence allowances (subsections (9) to (11)). In addition the section provides for –

- ◆ the application of subsections (2) to (7) – *subsection (8)*
- ◆ payments by a local planning authority – *subsections (12) and (13)*
- ◆ apportionment of costs where section 303A of the 1990 Act applies – *subsection (14)*
- ◆ interpretation – *subsections (15) to (17)*.

⁵¹ The 2004 Act, s.120, Sch.9.

⁵² To hold a qualifying inquiry was (by virtue of section 2(1))-

- ◆ to hold a local inquiry or other hearing under
 - s.8 of the Town and Country Planning Act 1968;
 - s.13 of the Town and Country Planning Act 1971;
 - para.6 of Sch.1 to the Local Government Act 1985;
 - ss.16 or 42 of, para.9 of Pt.2 of Sch.2, or para.8(1)(a) of Sch.7 to the 1990 Act;
- ◆ to consider objections under para.8(1)(b) of Sch.7 to the 1990 Act; or
- ◆ to conduct an examination in public under s.35B(1) of the 1990 Act.

⁵³ Subsections (2), (3) and (7).

9. Section 2 was limited in its effect to validating payments and the recovery of payments made in relation to appointments of persons to hold qualifying inquiries at any time *before* 8 November 1995 (Royal Assent). All costs in respect of these payments will have long since been made and recovered. There is no longer, therefore, any need to validate such payments nor to empower recovery of such amounts. **Office of the Deputy Prime Minister please confirm.** Accordingly section 2 is spent and is proposed for repeal.

Sections 3 and 4

10. Sections 3 (costs of holding certain Scottish inquiries etc) and 4 (retrospective validation of payments etc in connection with certain past Scottish inquiries and hearings) have already been repealed⁵⁴. They made broadly similar provision in relation to Scottish inquiries as sections 1 and 2 have done in relation to inquiries in England and Wales.

Section 5

11. Section 5 provides for the 1995 Act's short title, interpretation, financial provision and extent. These provisions are purely ancillary to the remainder of the 1995 Act and have no independent effect.⁵⁵

Substantive provisions remaining

12. The only substantive provisions remaining in the 1995 Act are-

- ◆ section 1(1) which inserted section 303A into the 1990 Act
- ◆ section 1(5) which added subsection (8) to section 35B of the 1990 Act.

13. Accordingly the 1995 Act now serves no useful purpose except to keep in force the amendments contained in section 1. The effect of these section 1 amendments may conveniently be preserved by the entry in the *attached Schedule of consequential and connected provisions*. This will thus supersede section 1 and enable the whole of the 1995 Act to be repealed.

⁵⁴ Planning (Consequential Provisions) (Scotland) Act 1997, s.3, Sch.1, Pt.1.

Extent

14. The 1995 Act extends to England and Wales only.

Consultation

15. HM Treasury, the Office of the Deputy Prime Minister, the Local Government Association, the Welsh Local Government Association and the relevant authorities in Wales have been consulted about this proposed repeal.

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⁵⁵ For example provisions such as that in section 5(3) requiring money to be paid out of moneys voted by Parliament or for payment to be made into the Consolidated Fund are almost always inserted in Bills for reasons relating to Parliamentary procedure. They serve no purpose once a Bill has been enacted.

SCHEDULE
OF
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Town and Country Planning Act 1990 (c.8)

. Section 303A of the Town and Country Planning Act 1990 (responsibility of local planning authorities for costs of holding certain inquiries etc) and section 35B(8) of that Act (examinations in public in connection with structure plans) have effect as if section 1 of the Town and Country Planning (Costs of Inquiries etc) Act 1995 continued in force.